

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

January 7, 2014 at 9:32 a.m.

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1. [13-33800](#)-B-13 MARIA MEZ
JPJ-1
OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-11-13 [[22](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The objection is continued to February 4, 2014, at 9:32 a.m., to be heard after the hearing on the debtor's motion to value the collateral of Westlake Financial Services.

2. [11-25702](#)-B-13 FRANK/PAULA MARKSMAN
CA-3
MOTION TO INCUR DEBT
12-17-13 [[59](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

3. [13-34802](#)-B-13 DARRYL CARTER
RJ-1
MOTION TO VALUE COLLATERAL OF
GM FINANCIAL
12-11-13 [[16](#)]

Tentative Ruling: The debtor's motion to value the collateral of Americredit Financial Services, Inc. dba GM Financial, is continued to a final evidentiary hearing on February 26, 2014, at 10:00 a.m. before the Honorable David E. Russell in courtroom 32.

On or before February 19, 2014, each party shall lodge (not file) with the Courtroom Deputy, Ms. Sheryl Arnold, two identical, tabbed binders (or set of binders), each containing (i) a witness list (which includes a general summary of the testimony of each designated witness), (ii) one set of the party's exhibits, separated by numbered or lettered tabs and (iii) a separate index showing the number or letter assigned to each exhibit and a brief description of the corresponding document. The debtor's binder tabs shall be consecutively numbered, commencing at

number 1. The respondent's binder tabs shall be consecutively lettered, commencing at letter A. On or before February 19, 2014, each party shall serve on the other party an identical copy of the party's lodged binder (or set of binders) by overnight delivery. The parties shall lodge and serve these binder(s) regardless of whether some or all of the contents have been filed in the past with this court. The lodged binder(s) shall be designated as Exhibits for Hearing on Debtor's Motion to Value the Collateral of Americredit Financial Services, Inc. dba GM Financial. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [www.tabbies.com) - debtors' stock number 58093 and creditors' stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

The court acknowledges that the respondent creditor's opposition was filed on December 31, 2013, only seven days before the date of this hearing. The court treats the creditor's opposition as timely filed in this instance due to the fact that the debtor's notice of hearing (Dkt. 17) states that the deadline for filing and serving written opposition is December 31, 2013 (Dkt. 17 at 2).

The court will issue a minute order.

4. [12-36905](#)-B-13 SHALA PRIDGEN
JPJ-1

OBJECTION TO CLAIM OF ECAST
SETTLEMENT CORPORATION/CAPITAL
ONE, CLAIM NUMBER 8
11-12-13 [[68](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim No. 8, filed on September 3, 2013, by Ecast Settlement Corporation/Capital One in the amount of \$1977.79 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was January 23, 2013, and to file a government claim was March 18, 2013. The Claim was filed on September 3, 2013.

The court will issue a minute order.

5. [13-31606](#)-B-13 GERALD MCCURDY
MET-2

MOTION TO CONFIRM PLAN
11-17-13 [[30](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted and the amended plan filed November 17, 2013, will be confirmed.

The court will issue a minute order granting the motion to confirm. Counsel for the debtors shall submit an order confirming the plan using EDC form 3-081-12 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

6. [13-21407](#)-B-13 CHARLES/SUZANNE ELLIS MOTION TO CONFIRM PLAN
SAC-3 11-5-13 [[118](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted and the amended plan filed November 5, 2013, will be confirmed.

The court will issue a minute order granting the motion to confirm. Counsel for the debtors shall submit an order confirming the plan using EDC form 3-081-12 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

7. [12-28008](#)-B-13 SCOTT/KIMBERLEY OSBORNE MOTION TO SELL
CA-1 12-16-13 [[33](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

8. [10-26109](#)-B-13 ROBIN/JACQUELINE GREY MOTION TO MODIFY PLAN
RWH-3 11-14-13 [[59](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed November 14, 2013, is confirmed.

The motion is granted and the modified plan is confirmed in the absence of any objection under 11 U.S.C. § 1325(b)(1)(B) by the trustee or the holder of an allowed unsecured claim. The court notes, however, that the modified plan reduces the total amount to be paid to general unsecured creditors to an amount less than that required by 11 U.S.C. section 1325(b)(1)(B). The court may not raise a section 1325(b) objection sua sponte. Andrews v. Loheit (In re Andrews), 155 B.R. 769, 771-772 (9th

Cir. BAP 1993), aff'd. 49 F.3d 1404 (9th Cir. 1995). The court expresses no opinion whether the modified plan would be confirmed in the presence of an objection by the trustee or the holder of an allowed unsecured claim. See Hamilton v. Lanning, ___ U.S. ___, 130 S. Ct. 2464, 177 L.Ed.2d 23 (2010) (discussing evidence required to rebut the presumption of a debtor's projected disposable income established by Official Form 22C).

The court will issue a minute order.

9. [11-29010](#)-B-13 TRINIDAD MARZAN MOTION TO SELL
SAC-1 12-5-13 [[40](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. Pursuant to 11 U.S.C. § 363(b), the debtor is authorized to sell the real property located at 9595-9597 Florin Road, Sacramento, California to Anil Singh and Madhu Singh for \$500,000.00, on the terms set forth in the motion. Except as so ordered, the motion is denied.

The court will issue a minute order.

10. [11-43113](#)-B-13 DANIEL/MARGARET FRANCO MOTION TO INCUR DEBT
PGM-5 11-13-13 [[82](#)]

Tentative Ruling: The motion is dismissed without prejudice.

This motion for authorization to incur debt for the purpose of purchasing real property is not ripe for adjudication. The debtors have not shown that if this motion is granted an actual sale transaction will take place, as they have shown no evidence that the debtors will actually be able to obtain the financing that they propose in the motion. The debtors essentially seek an order "pre-approving" their purchase, the terms of which may or may not be agreed to by a seller or entity extending credit.

The absence of an actual transaction for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no finalized, actual agreement for the financing of the property, no case or controversy within the meaning of Article III exists.

The court will issue a minute order.

11. [13-33014](#)-B-13 VERONICA CORMIER AND OBJECTION TO DEBTORS' CLAIM OF
JPJ-2 EUGENE HUBBARD EXEMPTIONS
11-12-13 [[21](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The objection is dismissed.

The objection is moot. The debtors filed an amended Schedule C on December 24, 2013 (Dkt. 34 at 2). The claims of exemption in the amended Schedule C supersede the claims of exemption to which the trustee objects.

The court will issue a minute order.

12. [11-42715](#)-B-13 VIRGINIA PAYTON MOTION TO MODIFY PLAN
MET-3 11-9-13 [[64](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled. The motion is granted and the modified plan filed November 9, 2013, is confirmed.

The chapter 13 trustee's opposition is overruled for the reason stated in the debtor's reply filed on December 31, 2013 (Dkt. 73). The debtor has paid the delinquent plan payment described by the trustee in his opposition.

The court will issue a minute order.

13. [11-31717](#)-B-13 CHERYL MOORE MOTION TO VALUE COLLATERAL OF
LC-2 WELLS FARGO BANK, N.A.
11-21-13 [[37](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Wells Fargo Bank, N.A.'s ("Wells Fargo") claim in this case secured by the second deed of trust on real property located at 5914 Higgins Street, Carmichael, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$183,750.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo with

a balance of approximately \$254,070.00 thus, the value of the collateral available to Wells Fargo on its second deed of trust is \$0.00.

The court will issue a minute order.

14. [10-46519](#)-B-13 RANDY/BABETTE WHITE CONTINUED MOTION TO APPROVE
WW-4 LOAN MODIFICATION
11-12-13 [[43](#)]

Disposition Without Oral Argument: This motion continued from December 10, 2013, at 9:32 a.m., to allow the debtors to file a revised certificate of service. The debtors did so timely. This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. The debtors are authorized to incur credit on the terms set forth in the Home Affordable Modification Agreement filed as Exhibit "A" to the motion (Dkt. 46 at 2).

The court will issue a minute order.

15. [13-22923](#)-B-13 RUDY HEURTELOU AND WENDY OBJECTION TO CLAIM OF BAKER
JPJ-2 LAU SANDERS, LLC/PRIDE
ACQUISITIONS, LLC, CLAIM NUMBER
17
11-12-13 [[144](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the number of matters on this morning's three related calendars (_ matters), the court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim No. 17, filed on July 31, 2013, by Baker Sanders, LLC/Pride Acquisitions, LLC in the amount of \$51,498.10 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was July 17, 2013, and to file a government claim was September 3, 2013. The Claim was filed on July 31, 2013.

The court will issue a minute order.

16. [12-34525](#)-B-13 VICTORIA RAMOS AND LARRY MOTION TO MODIFY PLAN
PGM-3 MALLARI 11-12-13 [[77](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled. The motion is granted and the modified plan filed November 12, 2013, is confirmed.

The trustee's opposition is overruled for the reasons set forth in the debtors' reply filed on December 31, 2013 (Dkt. 87).

The court will issue a minute order.

17. [13-31325](#)-B-13 LANCE SMITH AND NICOLE MOTION TO CONFIRM PLAN
LDD-1 CRIST-SMITH 11-4-13 [[32](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted and the amended plan filed November 4, 2013, will be confirmed.

The court will issue a minute order granting the motion to confirm. Counsel for the debtors shall submit an order confirming the plan using EDC form 3-081-12 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

18. [12-26328](#)-B-13 THERESA/THOMAS NICHOLAS MOTION TO DISMISS CASE
SLH-2 11-21-13 [[29](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. Pursuant to 11 U.S.C. § 1307(b), the case is dismissed.

The court will issue a minute order.

19. [13-33928](#)-B-13 DAVID NEWBERRY OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-9-13 [[22](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objection under 11 U.S.C. § 1325(b)(1)(B) is sustained. The trustee's objection regarding the debtor's failure to file a motion to value the collateral of Bank of America, N.A. is overruled. Confirmation of the initial plan filed October 30, 2013, is denied. The

trustee's motion to dismiss is conditionally denied, the conditions being that on or before January 21, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The trustee's second objection is overruled because elsewhere on this calendar the court has granted the debtor's motion to value the collateral of Bank of America, N.A. without oral argument.

The court will issue a minute order.

20. [13-33928](#)-B-13 DAVID NEWBERRY MOTION TO VALUE COLLATERAL OF
KRW-1 BANK OF AMERICA, N.A.
12-9-13 [[18](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Bank of America, N.A. ("BoFA") claim in this case secured by the second deed of trust on real property located at 2905 Tourmaline Way, Antelope, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$222,377.00 on the date of the petition. The Property is encumbered by a first deed of trust held by BoFA with a balance of approximately \$317,991.00 thus, the value of the collateral available to BoFA on its second deed of trust is \$0.00.

The court will issue a minute order.

21. [13-33928](#)-B-13 DAVID NEWBERRY OBJECTION TO CONFIRMATION OF
RCO-1 PLAN BY THE BANK OF NEW YORK
MELLON
12-18-13 [[25](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The objection is overruled.

The objection was not timely filed. The Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines entered on November 7, 2013, (Dkt. 9) required objections to confirmation of the initial plan to be filed and served by December 12, 2013. This objection was filed on December 18, 2013.

The court will issue a minute order.

22. [13-22830](#)-B-13 MARIO THOMPSON AND OBJECTION TO CLAIM OF RABOBANK,
JPJ-1 MICHELLE HAMMACK-BURNS N.A., CLAIM NUMBER 13
11-12-13 [[31](#)]

Disposition Without Oral Argument: This objection is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim No. 13, filed on July 23, 2013, by Rabobank, N.A. in the amount of \$4317.35 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was July 10, 2013, and to file a government claim was August 28, 2013. The Claim was filed on July 23, 2013.

The court will issue a minute order.

23. [13-33334](#)-B-13 STEVEN/SUSANN MCCULLOUGH CONTINUED OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
11-19-13 [[14](#)]

WITHDRAWN BY M.P.

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The objection is removed from the calendar. The trustee withdrew the objection on December 16, 2013 (Dkt. 25).

24. [13-33334](#)-B-13 STEVEN/SUSANN MCCULLOUGH CONTINUED OBJECTION TO
PPR-1 CONFIRMATION OF PLAN BY BANK OF
AMERICA, N.A.
11-21-13 [[17](#)]

Tentative Ruling: This matter continued from December 10, 2013. It remains in a preliminary posture under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The creditor's objection is overruled. The initial plan filed October 15, 2013, will be confirmed.

The creditor's objection is overruled because the creditor has presented no evidence supporting its contention that the debtor owes the creditor in excess of \$41,500.00 in pre-petition arrears. The creditor's internal policies are not a basis for suspending the Federal Rules of Evidence or the requirements of LBR 9014-1(d)(6).

Nothing in this ruling constitutes a finding that the actual amount of the arrears is \$41,500.00. As provided for in section 2.04 of the plan, the proof of claim filed by the creditor, not the plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount of classification of the claim. The claim filing deadline in this case is February 12, 2013.

The court will issue a minute order overruling the objection. Counsel for the debtors shall submit an order confirming the plan using EDC form 3-081-12 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

25. [13-33136](#)-B-13 SOUSANNA KHODJOUMIAN
JPJ-1

CONTINUED AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR AMENDED MOTION
TO DISMISS CASE
11-22-13 [[23](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objection is overruled. The initial plan filed October 9, 2013, (Dkt. 5) will be confirmed.

The trustee's objection is overruled because elsewhere on this calendar the court has granted the debtor's motion to value the collateral of State Farm Bank, FSB without oral argument.

The court will issue a minute order overruling the trustee's objection. Counsel for the debtor shall submit an order confirming the plan using EDC form 3-081-12 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

26. [13-33136](#)-B-13 SOUSANNA KHODJOUMIAN
NUU-1

MOTION TO VALUE COLLATERAL OF
STATE FARM BANK, FSB
11-14-13 [[16](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of State Farm Bank, FSB's ("State Farm") claim in this case secured by the second deed of trust on real property located at 6606 Raywood Court, Citrus Heights, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$299,293.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Ocwen Loan Servicing, LLC with a balance of approximately \$374,000.00. Thus, the value of the collateral available to State Farm on its second deed of trust is \$0.00.

The court will issue a minute order.

27. [10-47637](#)-B-13 TERRY LOGAN
PGM-2

MOTION TO MODIFY PLAN
11-27-13 [[39](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed November 27, 2013, is confirmed.

The court will issue a minute order.

28. [11-31037](#)-B-13 CHRISTOPHER/SHELLI BECK
CJY-2

MOTION TO MODIFY PLAN
11-14-13 [[68](#)]

Tentative Ruling: The motion to confirm the modified plan filed November 14, 2013, is denied.

Although no party in interest has oppose the motion, the court has an independent duty to ensure that the plan satisfies the requirements of the Bankruptcy Code for confirmation.

In this case, the debtors have not sustained their burden of showing that the plan is feasible, as required by 11 U.S.C. § 1325(a)(6). The modified plan proposes to change the treatment of the secured claim of BAC Home Loans Servicing, LP ("BAC") in class 4 to provide that the

debtors will no longer make a payment directly to BAC but will satisfy BAC's secured claim by a sale of the real property securing its claim. The plan does not specify when said sale will occur. The court notes that the debtors have previously filed a motion to short sell real property (DCN CJY-1), which was denied without prejudice by order entered December 16, 2013 (Dkt. 79), due to the debtors' failure to show evidence of lienholder consent to the short sale. The debtors having provided no evidence with the instant motion to confirm that the short sale will occur, the motion is denied.

The court will issue a minute order.

29. [11-37137](#)-B-13 DENNIS/FREDIA GREEN MOTION TO APPROVE LOAN
JT-2 MODIFICATION
11-6-13 [[38](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. The debtors are authorized to incur credit on the terms set forth in the Loan Modification Agreement filed as Exhibit "A" to the motion (Dkt. 40 at 2).

The court will issue a minute order.

30. [13-29337](#)-B-13 NORMA HART OBJECTION TO CLAIM OF DR.
MMM-7 ARTHUR TING, CLAIM NUMBER 7
11-20-13 [[16](#)]

Disposition Without Oral Argument: This objection is unopposed. The court issues the following abbreviated ruling.

The debtor's objection is sustained. Claim no. 7 on the court's claims register, filed on November 8, 2013 (the "Claim") by Dr. Arthur Ting as assignee (the "Claimant") is disallowed, except to the extent already paid by the trustee pursuant to the terms of the confirmed plan.

The debtor questions the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim. Fed. R. Bankr. P. 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim.

Here, the debtor provides evidence that the Claim is time-barred under California law. Pursuant to the California Code of Civil Procedure Section 337, the statute of limitations on an action to recover upon a book account is four years. Here, the proof of claim form and the statement summary attached to the Claim indicates that the claim is based

on expenses incurred with respect to a medical procedure. Such an account constitutes a book account as defined in Cal. Civ. Proc. Code § 337a. Pursuant to Cal. Civ. Proc. Code § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side. As debtor's objection points out, the Claim indicates the obligation accrued on February 15, 2007. Therefore, the debtor has provided sufficient evidence that the Claimant's cause of action on its Claim began to accrue on February 15, 2007, more than six years before debtor filed her chapter 13 petition on July 15, 2013. By failing to respond to the objection, the creditor has failed to carry its burden of proving up the Claim. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

The court will issue a minute order.

31. [12-22439](#)-B-13 ARTURO/CRISTINA GUTIERREZ MOTION TO MODIFY PLAN
JMC-5 11-14-13 [[75](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled. The motion is granted and the modified plan filed November 14, 2013, is confirmed with the following modifications: 1.) Pursuant to section 2.15 of the plan, the debtors shall pay no less than 0.17% to the holders of general unsecured claims; and 2.) The plan payment for months 21-55 of the plan shall be \$2153.00.

The court will issue a minute order.

32. [13-30339](#)-B-13 MICHAEL/JOYCE BONANNO OBJECTION TO CLAIM OF EL DORADO
CAH-4 COUNTY TAX COLLECTOR, CLAIM
NUMBER 3
11-18-13 [[96](#)]

Tentative Ruling: The opposition filed by El Dorado County is sustained. The objection is overruled.

The objection is overruled for the reasons set forth in El Dorado County's written opposition. The portion of El Dorado County's secured claim to which the debtors object is related to unpaid property taxes for the tax year 2013-2014. Pursuant to Cal. Rev. & Tax Code § 2192, those taxes became a lien on the debtors' property as of January 1, 2013. The attachment of the lien is sufficient to create a secured claim in the bankruptcy case. Johnson v. Home State Bank, 501 U.S. 78 (1991).

The court will issue a minute order.

33. [13-32540](#)-B-13 CARLOS/VANESSA MORALES
DNL-3

MOTION FOR COMPENSATION FOR
KIMBERLY J. HUSTED, CHAPTER 7
TRUSTEE(S), FEES: \$1,850.00,
EXPENSES: \$23.00
12-3-13 [[49](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. Pursuant to 11 U.S.C. § 330(a), the former chapter 7 trustee shall be allowed an administrative expense under 11 U.S.C. § 503(b) in the amount of \$1850.00 in fees and \$23.00 in costs, for a total of \$1873.00. This order does not constitute a plan modification. Except as so ordered, the motion is denied.

The court finds that the requested fees and expenses constitute reasonable compensation for actual, necessary services rendered by the former chapter 7 trustee.

The court will issue a minute order.

34. [13-32540](#)-B-13 CARLOS/VANESSA MORALES
DNL-4

MOTION FOR COMPENSATION FOR J.
RUSSELL CUNNINGHAM, TRUSTEE'S
ATTORNEY(S), FEES: \$3,037.50,
EXPENSES: \$54.40
12-3-13 [[54](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis as an administrative expense under 11 U.S.C. § 503(b) in the amount of \$3037.50 in fees and \$54.40 in expenses, for a total of \$3091.90, for services rendered during the period October 29, 2013, through and including November 7, 2013. This order does not constitute a plan modification. Except as so ordered, the motion is denied.

By order entered on November 12, 2013 (Dkt. 35), the court authorized the chapter 7 trustee to retain the applicant as counsel for the former chapter 7 trustee in this case, with an effective date of employment of October 28, 2013. The applicant now seeks compensation for services rendered and costs incurred during the period October 29, 2013, through and including November 7, 2013. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

35. [10-20041](#)-B-13 ALLEN/BEATRICE CLOVER
PGM-2

MOTION TO MODIFY PLAN
11-27-13 [[40](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed November 27, 2013, is confirmed.

The court will issue a minute order.

36. [13-35542](#)-B-13 ANTHONY/RENEE TOKUNO
DJC-1

MOTION TO EXTEND AUTOMATIC STAY
12-23-13 [[12](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

37. [12-41343](#)-B-13 RANDALL FRANK
ET-5

MOTION TO MODIFY PLAN
11-12-13 [[71](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled. The motion is granted and the modified plan filed November 12, 2013, is confirmed with the following modification: The plan's payment provisions shall provide that the debtor has paid a total of \$12,759.41 into the plan as of November 25, 2013; commencing December 25, 2013, the debtor shall pay \$1067.67 per month for the remaining months of the plan.

The court will issue a minute order.

38. [13-35343](#)-B-13 HARVEY CLARK
CAH-1

MOTION TO EXTEND AUTOMATIC STAY
12-4-13 [[10](#)]

Tentative Ruling: The motion is denied.

By this motion, the debtor seeks an extension of the automatic stay of 11 U.S.C. § 362(a), pursuant to 11 U.S.C. § 362(c)(3)(B), as the debtor has had one case that was pending and dismissed within the 12 month period prior to the commencement of the instant case. 11 U.S.C. § 362(c)(3)(B) requires that such a motion be completed before the expiration of thirty days after the commencement of the case. In this case, the debtor's case was commenced on December 3, 2013. The thirty day period specified in § 362(c)(3)(B) expired on January 2, 2014. Relief under § 362(c)(3)(B) is

no longer available to the debtor.

The court will issue a minute order.

39. [10-41245](#)-B-13 FRANK/PAULA GONZALES
JT-4

MOTION TO VALUE COLLATERAL OF
NAVY FEDERAL CREDIT UNION
12-6-13 [[47](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Navy Federal Credit Union's ("NFCU") claim in this case secured by the second deed of trust on real property located at 910 Sage Drive, Vacaville, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$235,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by NFCU with a balance of approximately \$277,000.00. Thus, the value of the collateral available to NFCU on its second deed of trust is \$0.00.

The court will issue a minute order.

40. [10-41245](#)-B-13 FRANK/PAULA GONZALES
JT-5

MOTION TO VALUE COLLATERAL OF
NAVY FEDERAL CREDIT UNION
12-6-13 [[52](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Navy Federal Credit Union's ("NFCU") claim in this case secured by the third deed of trust on real property located at 910 Sage Drive, Vacaville, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$235,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by NFCU with a balance of approximately \$277,000.00 and a second deed of trust held by NFCU with a balance of approximately \$36,000.00. Thus, the value of the collateral available to NFCU on its third deed of trust is \$0.00.

The court will issue a minute order.

41. [10-44647](#)-B-13 MARGARET WEST
SDB-4

MOTION TO SELL
12-5-13 [[51](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. Pursuant to 11 U.S.C. § 363(b), the debtor is authorized to sell the real property located at 1630 Michigan Street, Fairfield, California to Nazario Mora Huerta for \$229,900.00, on the terms set forth in the motion. Except as so ordered, the motion is denied.

The court will issue a minute order.

42. [13-29747](#)-B-13 YANETA LACEY
JPJ-2

CONTINUED MOTION TO DISMISS
CASE FOR FAILURE TO MAKE PLAN
PAYMENTS, MOTION TO DISMISS
CASE FOR FAILURE TO PROVIDE TAX
DOCUMENTS AND/OR MOTION TO
DISMISS CASE
9-5-13 [[19](#)]

Tentative Ruling: This matter continued from December 10, 2013. The court issues the following tentative ruling.

The motion is granted. The bankruptcy case is dismissed pursuant to 11 U.S.C. § 1307(c), due to the debtor's ineligibility to be a debtor pursuant to 11 U.S.C. § 109(h).

11 U.S.C. § 109(h) provides that an individual may not be a debtor "unless the individual has, during the 180-day period ending on the date of filing of the petition by such individual, received from the approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing . . . That outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis." Pursuant to 11 U.S.C. § 521(b)(1), the debtor is required to file a certificate from the approved nonprofit budget and credit counseling agency that provided services to the debtor which describes said services.

In this case, on September 24, 2013, (Dkt. 24) the debtor filed a certificate from Abacus Credit Counseling stating that the debtor received credit counseling on August 28, 2013. This does not comply with the requirement of 11 U.S.C. § 109(h) because the debtor did not obtain the credit counseling prior to the date of the filing of the bankruptcy petition on July 24, 2013.

Because the debtor is ineligible to be a debtor, the bankruptcy case is dismissed. If the case were not dismissed for ineligibility, it

would be dismissed under 11 U.S.C. § 1307(c)(1) for unreasonable delay that is prejudicial to creditors.

The court will issue a minute order.

43. [13-29747](#)-B-13 YANETA LACEY MOTION TO CONFIRM PLAN
PGM-1 10-30-13 [[40](#)]

Tentative Ruling: The motion is dismissed.

The motion is moot. Elsewhere on this calendar the court has granted the chapter 13 trustee's motion to dismiss this case due to the debtor's ineligibility to be a debtor pursuant to 11 U.S.C. § 109(h).

The court will issue a minute order.

44. [13-29747](#)-B-13 YANETA LACEY COUNTER MOTION TO DISMISS CASE
PGM-1 11-27-13 [[53](#)]

Tentative Ruling: The trustee's countermotion is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The countermotion is dismissed.

The countermotion is moot. Elsewhere on this calendar the court has granted the chapter 13 trustee's motion to dismiss this case due to the debtor's ineligibility to be a debtor pursuant to 11 U.S.C. § 109(h).

The court will issue a minute order.

45. [13-28451](#)-B-13 DOUGLAS SCOTT MOTION TO CONFIRM PLAN
RPH-2 11-19-13 [[53](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion to confirmed the amended plan filed November 19, 2013 (Dkt. 52) (the "Plan") and the trustee's opposition to the motion (Dkt. 63) are dismissed.

The motion to confirm the Plan and the trustee's opposition to the motion are moot. On November 20, 2013, the debtor filed an amended plan (Dkt. 57) (the "Amended Plan"). The Amended Plan supersedes the Plan, which is the

subject of this motion and the trustee's opposition. 11 U.S.C. § 1323(b).

The court will issue a minute order.

46. [13-28451](#)-B-13 DOUGLAS SCOTT
RPH-2

COUNTER MOTION TO DISMISS CASE
12-23-13 [[63](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 63) is filed under LBR 9014-1(f)(1)(B). The court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before January 21, 2014, the debtor files and serves a motion to confirm the plan filed November 20, 2013 and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court dismissed as moot the trustee's opposition to the debtor's motion to confirm the amended plan filed November 19, 2013 (Dkt. 52) elsewhere on today's calendar because the debtor filed a subsequent amended plan on November 20, 2013 (Dkt. 57) that superseded it. However, in this instance the court conditionally denies the trustee's motion to dismiss because the debtor is yet to file a motion to confirm the latter amended plan and provide proper service of that plan to all creditors as is required by the Local Bankruptcy Rules.

The court will issue a minute order.

47. [13-28451](#)-B-13 DOUGLAS SCOTT
IK-2

OBJECTION TO CONFIRMATION OF
PLAN BY THE GOLDEN 1 CREDIT
UNION
12-18-13 [[58](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

Creditor Golden 1 Credit Union ("Creditor")'s objection to the motion to confirm the amended plan filed November 19, 2013 (Dkt. 52) (the "Plan") is dismissed.

The Creditor's objection is moot. On November 20, 2013, the debtor filed an amended plan (Dkt. 57) (the "Amended Plan"). The Amended Plan supersedes the Plan, which is the subject of the Creditor's objection. 11 U.S.C. § 1323(b).

For Creditor's future reference, a stand alone objection to confirmation should be filed only when the objection is made pursuant to the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors & Deadlines ("Bankruptcy Notice"). The Bankruptcy Notice in this case (Dkt. 15) refers to

objections to the plan filed July 1, 2013 (Dkt. 10). When, as here, the debtor is seeking confirmation of a subsequent plan by motion, creditors should file an opposition to the debtor's motion that conforms to the requirements of Local Bankruptcy Rule 9014-1(f) (including without limitation use of the docket control number assigned to the debtor's motion).

The court will issue a minute order.

48. [13-33452](#)-B-13 VLADIMIR IVANOV AND MOTION TO VALUE COLLATERAL OF
CAH-2 TATYANA IVANOVA JPMORGAN CHASE BANK, N.A.
11-25-13 [[25](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of JPMorgan Chase Bank, N.A.'s claim secured by the second deed of trust on real property located at 4951 Jolana Lane, North Highlands, CA 95660 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$125,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo Home Mortgage with a balance of approximately \$147,326.00. Thus, the value of the collateral available to JPMorgan Chase Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

49. [13-33854](#)-B-13 WENDEL/MECIA GILL MOTION TO VALUE COLLATERAL OF
SJS-1 BANK OF AMERICA, N.A.
11-21-13 [[17](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Bank of America, N.A.'s claim secured by the second deed of trust on real property located at 8444 Arrowroot Circle, Antelope, CA 95843 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$283,306.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo Home Mortgage with a balance of approximately \$337,824.00. Thus, the value of the collateral available to Bank of America, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

50. [13-33854](#)-B-13 WENDEL/MECIA GILL
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-11-13 [[23](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objections are sustained. Confirmation of the plan filed October 28, 2013 (Dkt. 7) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before January 21, 2014, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

51. [13-28458](#)-B-13 CHRISTOPHER/GUADALUPE
CK-4 NASH

MOTION TO CONFIRM PLAN
11-15-13 [[69](#)]

Tentative Ruling: The trustee's opposition is overruled. The motion is granted, and the amended plan filed November 15, 2013 (Dkt. 75) will be confirmed with the following modification: Section 2.07 shall state that the monthly dividend for administrative expenses is \$50.00.

The court will issue a minute order granting the motion to confirm. Counsel for the debtors shall submit an order confirming the plan using EDC form 3-081-12 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

52. [11-33159](#)-B-13 RICHARD/JESSICA BLACK
JPJ-2

OBJECTION TO CLAIM OF WELLS
FARGO, CLAIM NUMBER 21
11-12-13 [[32](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim no. 21, filed on October 18, 2013 by Wells Fargo c/o ECMC in the amount of \$4,157.32 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was September 28, 2011. The Claim was filed on October 18, 2013.

The court will issue a minute order.

53. [11-33159](#)-B-13 RICHARD/JESSICA BLACK OBJECTION TO CLAIM OF WELLS
JPJ-3 FARGO, CLAIM NUMBER 22
11-12-13 [[36](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim no. 22, filed on October 18, 2013 by Wells Fargo c/o ECMC in the amount of \$4,670.18 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was September 28, 2011. The Claim was filed on October 18, 2013.

The court will issue a minute order.

54. [11-23560](#)-B-13 RODERICK/TERRY WARDLEY MOTION TO APPROVE LOAN
RWH-2 MODIFICATION
12-4-13 [[46](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The debtors' motion for authority to incur new debt is granted on principal, interest, and payment terms set forth in the Loan Modification Proposal submitted as Exhibit "A" to the motion (Dkt. 49, p.2).

The court will issue a minute order.

55. [10-40661](#)-B-13 ROBERT/EVELYN FERREIRA CONTINUED MOTION TO MODIFY PLAN
MAC-7 10-4-13 [[99](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion to confirm the first modified plan filed October 4, 2013 (Dkt. 104) (the "First Modified Plan") and the trustee's opposition to the motion (Dkt. 106) are dismissed.

The motion to confirm the First Modified Plan and the trustee's opposition to the motion are moot. On December 31, 2013, the debtors filed a second modified plan (Dkt. 135) (the "Second Modified Plan") and a motion to confirm it (Dkt. 131), setting the matter for hearing on February 4, 2014. The Second Modified Plan supersedes the First Modified Plan, which is the subject of this motion and the trustee's opposition. 11 U.S.C. §

1329(b) (2) .

The court will issue a minute order.

56. [10-40661](#)-B-13 ROBERT/EVELYN FERREIRA MOTION TO INCUR DEBT
MAC-9 12-20-13 [[123](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f) (2) . Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The motion is dismissed.

The motion is dismissed because the court lacks jurisdiction over the property that is the subject of this motion. The Ninth Circuit Bankruptcy Appellate Panel has made clear that "[B]ankruptcy courts have exclusive [*in rem*] jurisdiction over a debtor's property, wherever located, and over the estate." See In re Brown, 2006 WL 6810938 at *4 (B.A.P. 9th Cir. Sept. 28, 2006) (citing to Tenn. Student Assistance Corp. v. Hood, 541 U.S. 440, 447 (2004)). Furthermore, "what compromises 'property of the estate' is determined by federal law. Under the Bankruptcy Code, the commencement of a bankruptcy case creates an estate 'comprised of all the following property, wherever located and by whomever held:...[A]ll legal or equitable interests of the debtor in property as of the commencement of the case.'" Id. at *5; 11 U.S.C. § 541(a). Here, the debtors seek to incur debt of approximately \$234,000.00 from Big Valley Mortgage secured by a lien on the real property located at 8643 Briarbrook Circle, Orangevale, CA 95662 (the "Property"). According to the motion and supporting documents, the Property is owned by a trust of which joint debtor Evelyn Ferreira is the successor trustee and a beneficiary. The debtors have failed to demonstrate how the Property is property of the estate pursuant to 11 U.S.C. § 541(a). Furthermore, 11 U.S.C. § 364(c) (2) only authorizes the court to approve incurring secured debt if the property serving as security is property of the estate. As such, the court lacks jurisdiction over the Property and the motion to approve debt secured by the Property.

The court will issue a minute order.

57. [12-41261](#)-B-13 GRANT/DIANA FLOWERS CONTINUED MOTION TO CONFIRM
MAS-7 PLAN
8-27-13 [[156](#)]

Tentative Ruling: The trustee's objection relating to the debtors' lack of good faith in filing their chapter 13 plan pursuant to 11 U.S.C. § 1325(a) (3) is overruled without prejudice. The trustee's remaining objections are sustained for the reasons set forth therein. Creditor Wells Fargo Bank, N.A. ("WFB")'s objection that the plan fails to provide for the curing of the default on its secured claim pursuant to 11 U.S.C. § 1322(b) (5) overruled. WFB's objection regarding the debtors' ability to fund the plan pursuant to 11 U.S.C. § 1325(a) (6) is sustained. The opposition filed by the Glenda L. Walsh Family Trust ("Trust") is

overruled without prejudice. The motion to confirm the plan filed August 27, 2013 (Dkt. 161) is denied.

The trustee's objection that the plan was proposed not in good faith is overruled without prejudice because the trustee fails to cite or analyze the relevant Ninth Circuit authority on what constitutes such a filing in the context of 11 U.S.C. § 1325(a)(3). LBR 9014-1(d)(5).

WFB is the holder of a claim secured by a first deed of trust on the rental property located at 10106 Deschutes Road, Palo Cedro, CA. On June 25, 2013, the debtors filed a motion to value this collateral (Dkt. 101) for the purposes of plan confirmation. WFB filed opposition to this motion on July 10, 2013 (Dkt. 110), contesting the debtors' valuation of the property. By order entered August 16, 2013 (Dkt. 151), the matter was continued to a final evidentiary hearing to be held on November 21, 2013. However, on October 29, 2013, the parties entered into a written stipulation (Dkt. 190), agreeing that the value of the property for purposes of plan confirmation is \$157,500.00 and that WFB is allowed \$157,500.00 as a secured claim. The stipulation was approved by order entered November 8, 2013 (Dkt. 191). WFB's objection that the plan fails to provide for the curing of the default on its secured claim pursuant to 11 U.S.C. § 1322(b)(5) is therefore overruled as resolved by stipulation.

The Trust is the holder of a claim secured by both a second deed of trust on the debtors' residence located at 21731 Rolling Hills Drive, Palo Cedro, CA and a security interest in certain viatical settlements/life settlements. On August 27, 2013, the debtors filed a motion to value the collateral securing the Trust's claim (Dkt. 163) for the purposes of plan confirmation. The Trust filed opposition to this motion on October 7, 2013 (Dkt. 179), contesting the debtors' valuation of their residence and arguing that the motion failed to account for the value of the viatical settlements/life settlements. After two continuances, the parties stipulated to having the matter continued to a final evidentiary hearing to be held January 21, 2014 (Dkt. 196). The court overrules the Trust's opposition to the instant motion without prejudice because it depends entirely on the outcome of the evidentiary hearing and the motion is denied on the basis of other objections.

Aside from the objections of the trustee and WFB that have been sustained, the court notes that it has an independent duty to confirm only plans that comply with the requirements of the Bankruptcy Code. See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 278 (2010) ("Failure to comply with this [§§ 1328(a)(2) and 523(a)(8)] self-executing requirement should prevent confirmation of the plan even if the creditor fails to object, or to appear in the proceeding at all."); see also In re Dynamic Brokers, Inc., 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing Everett v. Perez, 30 F.3d 1209, 1213 (9th Cir. 1994)). The court notes that, although the debtors resolved the valuation dispute with WFB via stipulation, the terms of the stipulation are not consistent with the plan's proposed treatment of WFB's claim. The plan states that the value of WFB's interest in its collateral is \$115,000.00; however, the stipulation states that WFB shall have an allowed secured claim in the amount of \$157,500.00. According to the court's calculations, WFB's claim is underfunded if the monthly dividend remains at \$1,100.00 with a 5.75% interest rate for forty-two months. As such, the plan fails to comply with 11 U.S.C. § 1325(a)(5). Therefore, the debtors have not carried their burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a).

The court will issue a minute order.

58. [10-42063](#)-B-13 ERIC/TINA JELINSKI MOTION TO VALUE COLLATERAL OF
SDB-3 BOSCO CREDIT, LLC
11-27-13 [[69](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Bosco Credit, LLC's claim secured by the second deed of trust on real property located at 960 Cashel Circle, Vacaville, CA 95688 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$325,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wachovia Mortgage, FSB with a balance of approximately \$459,423.00. Thus, the value of the collateral available to Bosco Credit, LLC on its second deed of trust is \$0.00.

The court will issue a minute order.

59. [10-33265](#)-B-13 TODD/CRISTINA STURTEVANT MOTION TO DISMISS CASE AND/OR
IRS-1 MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
11-14-13 [[39](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. Pursuant to 11 U.S.C. §§ 1307(c)(1) and (c)(6), the case is dismissed.

The debtors' chapter 13 plan (Dkt. 27), confirmed by order entered October 27, 2010 (Dkt. 31), provides in section 6.02(c) that the "[d]ebtor's financial and business affairs shall be conducted in accordance with applicable non-bankruptcy law including the timely filing of tax returns and payment of taxes." The movant, creditor Internal Revenue Service of the United States (the "IRS") alleges without dispute that the debtors have failed to both timely and fully satisfy their income tax liabilities for the tax years 2010 through 2012. The foregoing facts constitute a material default by the debtors with respect to a term of a confirmed plan and cause to convert or dismiss the chapter 13 case pursuant to 11 U.S.C. § 1307(c)(6). Additionally, the IRS has established cause to convert or dismiss the chapter 13 case pursuant to 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors. In this instance, the court dismisses the case, as its review of the debtors' schedules shows that the debtors do not have significant non-exempt assets that could be administered by a trustee if the case were converted to chapter 7.

The court will issue a minute order.

60. [13-33765](#)-B-13 RACHELLE HICKS
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE JAN P. JOHNSON
AND/OR MOTION TO DISMISS CASE
12-9-13 [[30](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objections are sustained. Confirmation of the plan filed October 25, 2013 (Dkt. 6) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before January 21, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

61. [09-30068](#)-B-13 PATRICIA ALDRIDGE
CA-4

MOTION TO INCUR DEBT
12-17-13 [[61](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

62. [13-34171](#)-B-13 GASOLO TAWAKE
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-17-13 [[17](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objection regarding the debtor's failure to file certain motions to value collateral is overruled. The trustee's objection regarding the debtor's failure to file the spousal waiver of right to claim exemptions is sustained. Confirmation of the initial plan filed November 2, 2013 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before January 21,

2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

On December 30, 2013, the debtor filed separate motions to value collateral of Santander Consumer USA, Inc. (Dkt. 22) and OneMain Financial, Inc. (Dkt. 25), setting both matters for hearing on February 4, 2014 at 9:32 a.m. As such, the trustee's first objection has been resolved and is overruled.

Regarding the trustee's second objection relating to the debtor's failure to file a spousal waiver of right to claim exemptions pursuant to Cal. Civ. Proc. Code § 703.140(a)(2), the court acknowledges that on December 23, 2013, the debtor filed a Waiver of Right to Claim (Dkt. 21) (the "Waiver"). However, the Waiver is ineffective. Cal. Code Civ. Proc. § 703.140(a)(2) states that both the husband and wife must effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, exemptions other than those provided for under Cal. Code Civ. Proc. § 703.140(b). C.C.P. § 703.140(a)(2). This is supported by the Eastern District of California's official spousal waiver form, Form EDC 3-060, which contains a space for both the debtor and his/her non-filing spouse to sign. Here, the Waiver, which is not on Form EDC 3-060, appears to have been signed only by the debtor's non-filing spouse. Therefore, the trustee's second objection is sustained.

The court will issue a minute order.

63.	12-31472 -B-13 CARLOS BRATHWAITE SJS-3 CASE DISMISSED 12/9/13	MOTION TO MODIFY PLAN 11-19-13 [59]
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Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is dismissed.

The motion is moot. The bankruptcy case was dismissed by order entered December 9, 2013 (Dkt. 68).

The court will issue a minute order.

64.	12-36675 -B-13 DOUGLAS/JULIETTE AXT MMM-2	MOTION TO INCUR DEBT 12-18-13 [37]
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Tentative Ruling: This motion is governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The motion is dismissed without prejudice.

The motion is not ripe, and therefore the court lacks jurisdiction over the matter. The debtors seek court approval to enter into a lease agreement with BMW Financial Services ("BMW") for a 2014 BMW X1. However, the debtors have not provided proof of a final lease agreement between the parties that the court can approve.

The absence of an actual compromise or agreement for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no finalized, actual compromise or agreement to which the lienholder agrees, no case or controversy within the meaning of Article III exists.

Here, the court acknowledges that the debtors have attached as Exhibit "A" to the motion a copy of the Motor Vehicle Lease Agreement with BMW (Dkt. 40, p.2). However, as the debtors point out in their motion, this is only a "proposed lease agreement." The court notes that the proposed agreement is not signed by either the debtors or a representative of BMW. The justiciability doctrine does not allow the court to approve unsigned, proposed agreements that could be subject to change after court approval. As such, there is no actual compromise or agreement for the court to approve, and the motion is dismissed.

The court notes that, even if the motion were not dismissed, the motion would be denied without prejudice because the debtors have failed to demonstrate how they can afford the new lease payment. The debtors' Schedule J (Dkt. 1, p.27) states that the debtors have \$1,900.00 in monthly net income to devote to chapter 13 plan payments. The chapter 13 plan (Dkt. 5), confirmed by order entered November 21, 2012, provides for payments of \$1,900.00 with an auto lease with BMW listed in Class 6. The debtors' current monthly expenses stated on Schedule J include an auto payment in the amount of \$560.00 per month, which the debtors have identified as the payment they were making on their now-expired auto lease. The proposed lease payment is \$624.87 per month, which is \$64.78 higher than what their confirmed plan and schedules state that they can afford. The debtors have failed to address this issue. Simply stating that BMW is not requiring a down payment on the proposed lease, without more, is insufficient.

The court will issue a minute order.

65. [11-29876](#)-B-13 DAVID/EMMA PLANK
JT-5

MOTION TO VALUE COLLATERAL OF
JPMORGAN CHASE BANK, N.A.
11-25-13 [[62](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11

U.S.C. § 506(a), is granted. \$0.00 of JPMorgan Chase Bank, N.A.'s claim secured by the second deed of trust on real property located at 929 Fairway Drive, Ione, CA 95640 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$200,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Bank of America, N.A. with a balance of approximately \$239,930.05. Thus, the value of the collateral available to JPMorgan Chase Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

66. [13-20977](#)-B-13 JAMIE QUINN
JPJ-1
OBJECTION TO CLAIM OF STATES
RECOVERY SYSTEMS, INC./DEVONS
JEWELERS, CLAIM NUMBER 15
11-12-13 [[34](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim no. 15, filed on July 30, 2013 by States Recovery Systems, Inc./Devons Jewelers in the amount of \$342.11 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was May 29, 2013. The Claim was filed on July 30, 2013.

The court will issue a minute order.

67. [11-27178](#)-B-13 KAREN PRESCOTT
JPJ-2
OBJECTION TO CLAIM OF PENNYMAC
LOAN SERVICES, LLC/CITIBANK,
CLAIM NUMBER 14
11-12-13 [[79](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim no. 14, filed on October 2, 2013 by Pennymac Loan Services, LLC/Citibank, N.A. in the amount of \$502,343.36 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was July 27, 2011. The Claim was filed on October 2, 2013.

The court will issue a minute order.

68. [11-24286](#)-B-13 CHARANJIT/MOHINDER SAHOTA OBJECTION TO CLAIM OF SIERRA
JPJ-2 CENTRAL CREDIT UNION, CLAIM
NUMBER 18
11-12-13 [[177](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim no. 18, filed on August 30, 2011 by Sierra Central Credit Union (the "Creditor") in the amount of \$17,503.99 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was June 29, 2011. The Claim was filed on August 30, 2011.

The court acknowledges that the Creditor filed a notice of withdrawal of the Claim on December 23, 2013. However, this withdrawal is ineffective. Federal Rule of Bankruptcy Procedure 3006 states that "...If after a creditor has filed a proof of claim an objection is filed thereto or a complaint is filed against that creditor in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the case, the creditor may not withdraw the claim except on order of the court after a hearing on notice to the trustee or debtor in possession, and any creditors' committee elected pursuant to § 705(a) or appointed pursuant to § 1102 of the Code." Fed. R. Bankr. P. 3006. Here, the trustee filed an objection to the Claim on November 12, 2013. After that date, the Creditor lost the ability to withdraw the Claim as of right by filing a notice of withdrawal. As such, the Creditor's attempted withdrawal of the Claim is ineffective.

The court will issue a minute order.

69. [08-31781](#)-B-13 CYNTHIA POOLE MOTION TO VALUE COLLATERAL OF
LC-7 BANCO POPULAR NORTH AMERICA
12-5-13 [[88](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Banco Popular North America's claim secured by the second deed of trust on real property located at 4200 Aubergine Way, Mather, CA 95655 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$300,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Countrywide Home Lending with a balance of approximately \$347,720.00. Thus, the value of the collateral available to Banco Popular North America on its second deed of trust is \$0.00.

The court will issue a minute order.

70. [13-34180](#)-B-13 WILLIAM/YVETTE MARTINEZ
JPJ-1
OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-17-13 [[17](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The objection is dismissed.

The objection is moot. On December 18, 2013, the debtors filed an amended plan (the "Amended Plan") (Dkt. 25) and a motion to confirm it (Dkt. 24), setting the matter for hearing on February 4, 2014 at 9:32 a.m. The Amended Plan supersedes the plan that this objection is directed toward. 11 U.S.C. § 1323(b).

The court will issue a minute order.

71. [13-26082](#)-B-13 LINDA DIXON
SJJ-4
MOTION TO VALUE COLLATERAL OF
AUBURN INVESTORS, LLC
11-26-13 [[95](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$5,000.00 of Auburn Investors, LLC's claim secured by exercise equipment that was used in the debtor's business (the "Collateral") is a secured claim, and the balance of such claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Collateral had a value of \$5,000.00 on the date of the petition.

The court will issue a minute order.

72. [09-45987](#)-B-13 JEFFREY PERRY
KY-5
MOTION TO MODIFY PLAN
11-26-13 [[182](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is dismissed without prejudice because the debtor has failed to provide evidence that the motion complies with the noticing requirements of Local Bankruptcy Rule 3015-1(d)(2), which requires that "...parties-in-interest shall be served at least thirty-five (35) days prior to the hearing date." LBR 3015-1(d)(2). Here, the debtor has failed to file a proof of service in derogation of Local Bankruptcy Rule 9014-1(e). As a

The court will issue a minute order.

- Tentative Ruling:** The trustee's objections are governed by the procedures of LBR 9014-1(f) (2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The court will issue a minute order.

- Tentative Ruling:** The motion to confirm the modified plan filed August 29, 2013 (Dkt. 107) is denied.

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The court will issue a minute order.

75. [13-26379](#)-B-13 NESTOR/BLESILDA VALLARTA CONTINUED MOTION TO CONFIRM
RHM-2 PLAN
10-25-13 [[40](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the amended plan filed October 25, 2013 (Dkt. 45) will be confirmed.

The court will issue a minute order granting the motion to confirm. Counsel for the debtors shall submit an order confirming the plan using EDC form 3-081 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

76. [13-33879](#)-B-13 CHRISTINE MCDONOUGH CONTINUED MOTION TO VALUE
MRL-1 COLLATERAL OF CITIBANK, N.A.
AND CASTLE CREDIT CORPORATION
10-30-13 [[10](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

77. [13-31175](#)-B-13 JOHN DRISCOLL AND JANICE MOTION TO CONFIRM PLAN
RAH-2 KOPP
11-26-13 [[52](#)]

Tentative Ruling: The trustee's opposition is sustained. Creditor Internal Revenue Service ("IRS")'s objection that the plan's proposed interest rate of 0.00% on its secured claim violates 11 U.S.C. § 1325(a)(5)(B)(ii) is sustained. The motion to confirm the plan filed November 26, 2013 (Dkt. 51) is denied.

Because the IRS has objected, for the purposes of determining the appropriate interest rate to be paid on a secured claim that can be modified, the Supreme Court's decision in Till et ux. v. SCS Credit Corp., 541 U.S. 465, 124 S.Ct. 1951, 1955-56, 158 L.Ed.2d 787 (2004) directs this court to conduct a present value calculation as of the effective date of the plan by starting with the risk free rate and adjusting upward for appropriate risk factors. The form plan provides that the plan is "effective from the date it is confirmed." The court takes judicial notice pursuant to Federal Rule of Evidence 201 that the current prime rate is 3.25%. Because Till directs this court to begin its analysis with the prime rate, the plan's proposed rate of 0.00%,

which is less than the prime rate, violates 11 U.S.C. § 1325(a) (5) (B) (ii).

The court finds the debtors' reply to the trustee's opposition (Dkt. 61) unpersuasive for two reasons. First, regarding the trustee's objection that the plan's monthly payment does not equal the aggregate monthly amounts due, the debtors may be correct that certain obligations will be paid off far sooner than the sixty (60) month life of the plan, thereby freeing up additional funds as the plan progresses. However, according to their reply the earliest that said obligations will begin being paid off is month 4. The debtors fail to explain how the monthly payment of \$3,242.84 for the first three months of the plan is sufficient to cover the aggregate monthly expenses of \$4,430.77.

Second, the debtors refer the court to the Trustee's Statement of Investigation (the "Statement") filed December 26, 2013 (Dkt. 60) in support of their claim that they have provided the trustee with all the required documentation pertaining to their business. However, the Statement clearly explains at Line 10 that "this report is for information purposes only, and is not an exhaustive financial analysis of the debtor's business." As such, the Statement does not conclusively prove that the trustee has received a detailed statement itemizing the debtors' business expenses. The trustee claims to have not received this information, and the debtors have provided no further evidence to the contrary.

The court will issue a minute order.

78. [13-31175](#)-B-13 JOHN DRISCOLL AND JANICE COUNTER MOTION TO DISMISS CASE
RAH-2 KOPP 12-18-13 [[56](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 56) is filed under LBR 9014-1(f)(1)(B). The court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before January 21, 2014, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

79. [13-34188](#)-B-13 HENRY/HAZEL CASTILLO OBJECTION TO CONFIRMATION OF
AMC-1 PLAN BY CENTRAL MORTGAGE
COMPANY
12-16-13 [[22](#)]

Tentative Ruling: The creditor's objection is governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated

tentative ruling.

The creditor's objection is sustained. Confirmation of the plan filed November 4, 2013 (Dkt. 7) is denied.

The court will issue a minute order.

80. [13-34188](#)-B-13 HENRY/HAZEL CASTILLO
JPJ-1
- OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-19-13 [[26](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objections are sustained. Confirmation of the plan filed November 4, 2013 (Dkt. 7) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before January 21, 2014, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

81. [13-34188](#)-B-13 HENRY/HAZEL CASTILLO
SJS-1
- MOTION TO VALUE COLLATERAL OF
PNC BANK, N.A.
12-5-13 [[18](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of PNC Bank, N.A.'s claim secured by the second deed of trust on real property located at 3606 Stemmler Drive, Sacramento, CA 95834 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$342,038.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Central Mortgage Company with a balance of approximately \$403,064.00. Thus, the value of the collateral available to PNC Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

82. [10-49889](#)-B-13 GARY/MISSY SANCHEZ
JT-3

MOTION TO VALUE COLLATERAL OF
PATELCO CREDIT UNION
12-4-13 [[51](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Patelco Credit Union's claim secured by the second deed of trust on real property located at 1171 Randolph Drive, Yuba City, CA 95991 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$140,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Citimortgage, Inc. with a balance of approximately \$155,458.87. Thus, the value of the collateral available to Patelco Credit Union on its second deed of trust is \$0.00.

The court will issue a minute order.

83. [13-33189](#)-B-13 DANIEL/LORI CAMARENA
PGM-2

MOTION TO VALUE COLLATERAL OF
SCHOOLS FINANCIAL CREDIT UNION
11-15-13 [[24](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Schools Financial Credit Union's claim secured by the second deed of trust on real property located at 2521 34th Avenue, Sacramento, CA 95822 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$100,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo Home Mortgage with a balance of approximately \$194,188.23. Thus, the value of the collateral available to Schools Financial Credit Union on its second deed of trust is \$0.00.

The court will issue a minute order.

84. [13-33189](#)-B-13 DANIEL/LORI CAMARENA
PGM-3

MOTION TO VALUE COLLATERAL OF
U.S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT
11-15-13 [[29](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of the United States Department of Housing and Urban Development's claim secured by the third deed of trust on real property located at 2521 34th Avenue, Sacramento, CA 95822 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$100,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo Home Mortgage with a balance of approximately \$194,188.23. The Property is further encumbered by a second deed of trust held by Schools Financial Credit Union with a balance of approximately \$51,608.78. Thus, the value of the collateral available to the United States Department of Housing and Urban Development on its third deed of trust is \$0.00.

The court will issue a minute order.

85. [13-33189](#)-B-13 DANIEL/LORI CAMARENA
JPJ-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
11-19-13 [[35](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objection regarding the debtors' projected monthly disposable income reported on their Form 22C is overruled. The trustee's objection regarding the motion to value collateral of Wells Fargo Auto Finance is sustained. Confirmation of the plan filed October 10, 2013 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before January 21, 2014, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The trustee's objection to the projected monthly disposable income reported on the debtors' Form 22C is overruled because the debtors filed an amended

Form 22C on November 22, 2013 (Dkt. 38) which reports a monthly disposable income of (\$353.06). The court interprets the decision of the Supreme Court in Hamilton v. Lanning, 560 U.S. 505, 130 S. Ct. 2464, 177 L.Ed.2d 23 (2010) as standing for the proposition that Form 22C establishes a presumption of a debtor's monthly disposable income, and, thus, a presumption as to the amount that the debtor is required to pay to general unsecured creditors. Here, the debtors' amended Form 22C states that they have negative monthly disposable income, which creates the presumption that they have \$0.00 to pay to general unsecured creditors. This is consistent with the plan's treatment of the Class 7 claims. By failing to respond to the debtors' filing of amended Form 22C, the trustee has failed to rebut the presumption established by Hamilton. Therefore, the trustee's objection is overruled on this point.

The trustee's objection regarding the motion to value collateral of Wells Fargo Auto Finance is sustained because, contrary to the debtors' assertion in their reply brief (Dkt. 39), a motion to value this collateral has not been filed, served, and set for hearing on today's calendar. The feasibility of the plan depends upon a successful motion to value this creditor's collateral consistent with the plan's treatment of the claim listed in Class 2B.

The court will issue a minute order.

86. [13-34789](#)-B-13 JASON/MELINDA BORG
EJS-1

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
11-22-13 [8]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Wells Fargo Bank, N.A.'s claim secured by the second deed of trust on real property located at 5539 Delrose Court, Carmichael, CA 95608 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$424,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo Home Mortgage with a balance of approximately \$447,876.00. Thus, the value of the collateral available to Wells Fargo Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

87. [13-34190](#)-B-13 LAURA SEAY
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-19-13 [[16](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objections are sustained. Confirmation of the plan filed November 4, 2013 (Dkt. 6) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before January 21, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

88. [09-27391](#)-B-13 CHRISTOPHER/KELLI DAHL
MET-4

CONTINUED MOTION TO OBTAIN
CREDIT
11-25-13 [[77](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The motion is dismissed without prejudice.

The motion is not ripe, and therefore the court lacks jurisdiction over the matter. The debtors seek court approval to incur new debt of approximately \$320,000.00 from FirstPriority to purchase a residence located at 1008 Loretelli Drive, Modesto, CA. The debtors have not provided proof that FirstPriority consents to the proposed debt agreement.

The absence of an actual compromise or sale for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no finalized, actual compromise or sale agreement to which the lienholders agree, no case or controversy within the meaning of Article III exists.

The court acknowledges that the debtors have attached as Exhibit "C" to the motion a legible copy of the proposed debt agreement with

FirstPriority (Dkt. 86, p.2). However, as the court noted in its tentative ruling on December 10, 2013, the agreement has not been signed by a representative of FirstPriority. The apparent lack of consent from FirstPriority means that there is no actual case or controversy for the court to approve. Additionally, the court notes that the "Good Faith Estimate" ("GFE"), attached as Exhibit "D" to the motion (Dkt. 86, p.3), states that the interest rate for the GFE is available through January 6, 2014 at 12:31 p.m. and the estimate for all other settlement charges is available through December 11, 2013. Today's date is January 7, 2014. The debtors have provided no evidence that FirstPriority consents to an extension of these deadlines. Therefore, for the aforementioned reasons the debtors have failed to demonstrate that there is an actual compromise or sale for the court to approve, and the motion is dismissed without prejudice.

The court will issue a minute order.

89. [13-34672](#)-B-13 SANDOR/KARA SKLAR
SNM-1

MOTION TO VALUE COLLATERAL
AND/OR TO AVOID LIEN OF
STANFORD FEDERAL CREDIT UNION
11-25-13 [[10](#)]

Tentative Ruling: The motion to value collateral of Stanford Federal Credit Union is continued to a final evidentiary hearing on February 25, 2014, at 2:00 p.m. before the Honorable David E. Russell in courtroom 32. To the extent the debtors seek to avoid the second deed of trust on the real property located at 1943 Leaning Oak Court, Fairfield, CA 94534 (the "Property"), the motion is denied without prejudice.

On or before February 18, 2014, each party shall lodge (not file) with the Courtroom Deputy, Ms. Sheryl Arnold, two identical, tabbed binders (or set of binders), each containing (i) a witness list (which includes a general summary of the testimony of each designated witness), (ii) one set of the party's exhibits, separated by numbered or lettered tabs and (iii) a separate index showing the number or letter assigned to each exhibit and a brief description of the corresponding document. The debtors' binder tabs shall be consecutively numbered, commencing at number 1. The respondent's binder tabs shall be consecutively lettered, commencing at letter A. On or before February 18, 2014, each party shall serve on the other party an identical copy of the party's lodged binder (or set of binders) by overnight delivery. The parties shall lodge and serve these binder(s) regardless of whether some or all of the contents have been filed in the past with this court. The lodged binder(s) shall be designated as Exhibits for Hearing on Debtors' Motion to Value Collateral of Stanford Federal Credit Union. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [www.tabbies.com] - debtors' stock number 58093 and creditors' stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

To the extent the debtors seek to avoid the second deed of trust on the Property, the motion is denied without prejudice because the debtors have failed to cite to or analyze any authority for obtaining such relief through this motion.

The court will issue a minute order.

90. [13-22892](#)-B-13 SERGIO ZUCCALA
JPJ-1
OBJECTION TO CLAIM OF
COMMERCIAL TRADE BUREAU/VALLEY
YELLOW PAGES, CLAIM NUMBER 13
11-12-13 [[59](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim no. 13, filed on July 10, 2013 by Commercial Trade Bureau/Valley Yellow Pages in the amount of \$3,599.58 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was July 3, 2013. The Claim was filed on July 10, 2013.

The court will issue a minute order.

91. [13-33793](#)-B-13 CHRIS/ADELE JOHNSON
JPJ-1
OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-11-13 [[15](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The trustee's objection to confirmation and motion to dismiss filed December 11, 2013 (Dkt. 15) are continued to January 21, 2014 at 9:32 a.m., to be heard after disposition of Debtors' Motion to Value Collateral of Banco Popular North America.

92. [13-33696](#)-B-13 MARIO CARRASCO
JPJ-1
OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-9-13 [[22](#)]

Tentative Ruling: The trustee's objection and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objection is sustained. Confirmation of the plan filed October 23, 2013 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before January 21, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

93. [12-30697](#)-B-13 BURNETT/KEM WILLIAMS
IRS-1

MOTION TO DISMISS CASE AND/OR
MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
11-15-13 [[26](#)]

Tentative Ruling: The debtors' opposition is overruled. Creditor Internal Revenue Service ("IRS")'s motion is granted, and the case is dismissed.

11 U.S.C. § 1307(c) enumerates eleven non-exclusive grounds which may constitute "cause" for conversion or dismissal of a chapter 13 case. § 1307(c) establishes a two-step analysis for dealing with questions of conversion and dismissal. "First, it must be determined that there is 'cause' to act. Second, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" In re Nelson, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) The bankruptcy court is given discretion to convert or dismiss based on unreasonable delay by the debtor that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). A debtor's "unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for (conversion or) dismissal under § 1307(c)(1)." In re Ellsworth, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). In determining "cause" under § 1307(c), the court may analyze the entire record. In re de la Salle, 461 B.R. 593, 605 (B.A.P. 9th Cir. 2011).

Here, the IRS seeks dismissal or conversion of the case to one under chapter 7 on the grounds that the debtors have failed to timely file tax returns and pay taxes due. Specifically, the IRS contends that the debtors owe \$21,372.69 for their 2012 income taxes and an additional \$6,496.28 for an employment tax liability for the second quarter of 2013. The debtors argue that payment for the 2012 income tax liability is provided for under their confirmed plan (Dkt. 11) and that payment for the delinquent employment tax liability is being handled through the terms of an installment agreement entered into between the debtors and the IRS (Dkt. 33, p.3).

The court finds the debtors' arguments unpersuasive. First, the debtors contend that payment for the 2012 income tax liability is provided for through their confirmed plan. However, the debtors have cited to no authority in support of their assertion that this liability represents a pre-petition debt as opposed to a post-petition liability. The IRS asserts that its proof of claim does not include this liability

because the liability was incurred post-petition and is not entitled to priority treatment. In further support of the motion, the IRS has attached as an exhibit copies of the debtors' account transcripts for the tax periods ending December 31, 2012 and June 30, 2013 (Dkt. 29). Absent cited authority or other evidence to the contrary, the court concludes that the IRS's position that the debtors' 2012 income tax liability is a post-petition liability is correct.

Second, the debtors recognize in their response brief (Dkt. 31) that they failed to pay the employment tax liability for the second quarter of 2013. The court acknowledges that the parties entered into an installment agreement whereby the debtors would pay the obligation at \$300.00 per month starting on December 15, 2013. However, that agreement requires the debtors to meet certain conditions in order for the agreement to remain in effect. Specifically, the debtors must "pay on time all federal taxes that become due during the term of this arrangement." Additionally, debtors must "file on time all federal and state tax returns that become due during the term of this agreement" (Dkt. 33, p.4). The IRS asserts and has provided evidence (Dkts. 36 and 37) that the agreement is in default for the following reasons: (1) the debtors have incurred an additional employment tax liability for the third quarter of 2013 in the approximate amount of \$3,946.10; (2) the debtors have not made sufficient tax deposits for the fourth quarter of 2013; and (3) the debtors have not made any estimated tax payments with respect to their 2013 income tax liability. Accordingly, the debtors remain in default on their employment tax liability for the second quarter of 2013 while continuing to incur additional tax liabilities. Section 5.02 of the mandatory form plan requires that the debtors comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules, and applicable nonbankruptcy law. Local Bankruptcy Rule 3015-1(b)(4) requires that "the debtor's financial and business affairs shall be conducted in accordance with applicable nonbankruptcy law including the timely filing of tax returns and payment of taxes." LBR 3015-1(b)(4). For the reasons set forth above, the debtors are in violation of the Local Bankruptcy Rules and applicable nonbankruptcy law, and they have therefore defaulted materially with respect to a term of a confirmed plan.

The court finds that the IRS has established "cause" to dismiss or convert this case pursuant to 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors and 11 U.S.C. § 1307(c)(6) for a material default by the debtors with respect to a term of a confirmed plan. In this instance, the court dismisses the case, as it appears from a review of the debtors' schedules shows that the debtors do not have significant non-exempt assets that could be administered by a trustee if the case were converted to chapter 7.

The court will issue a minute order.

94. [11-44792](#)-B-7 CELESTE ROBERTS
CAH-8

MOTION TO APPROVE LOAN
MODIFICATION
11-21-13 [[100](#)]

CASE CONVERTED TO CHAPTER 7
ON 12/10/13

Tentative Ruling: The motion is dismissed.

The debtor does not have prudential standing to bring this motion. 11 U.S.C. § 364(c) authorizes only "the trustee" to obtain secured credit, subject to certain requirements. While it is true that a chapter 13 debtor has the rights and powers of a trustee under certain subsections of the Bankruptcy Code, 11 U.S.C. § 1303, such is not true in a chapter 7 case. Here, the debtor voluntarily converted her chapter 13 case to one under chapter 7 on December 10, 2013 (Dkt. 105). At that time, the debtor forfeited the powers she held concurrently with the chapter 13 trustee. As a chapter 7 debtor, she no longer has prudential standing to bring this motion.

The court will issue a minute order.

95. [13-32897](#)-B-13 RICHARD GIANGRASSO
IRS-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
INTERNAL REVENUE SERVICE
11-14-13 [[15](#)]

Tentative Ruling: Creditor Internal Revenue Service ("IRS")'s first objection that the plan does not provide for its priority claim is sustained. The IRS's second objection that the debtor is not eligible to be a chapter 13 debtor pursuant to 11 U.S.C. § 109(e) is overruled without prejudice to the filing of a motion to dismiss. The IRS's request in its reply brief (Dkt. 22) that the court take judicial notice of certain pleadings and documents is denied without prejudice to renewal in the context of a motion to dismiss. Confirmation of the plan filed October 2, 2013 (Dkt. 6) is denied.

Regarding the IRS's first objection, § 2.04 of the mandatory form plan states that "the proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim." In this case, the IRS filed its proof of claim, claim no. 4, on November 12, 2013 in the amount of \$425,330.52. Of that amount, \$335,898.29 is listed as being entitled to priority treatment. To date, the debtor has not filed an objection to the IRS's proof of claim. Therefore, the proof of claim controls and the objection is sustained because the plan does not provide for treatment of the \$335,898.29 portion of the claim that is entitled to priority. In response to this objection, the debtor only states that he will either object to the IRS's proof of claim or attempt to enter into a stipulation to resolve the matter. Again, as of the date of this hearing the debtor has not accomplished either task.

Regarding the IRS's second objection, the court notes that a determination as to the eligibility of the debtor to be a chapter 13 debtor under 11 U.S.C. § 109(e) requires a motion to dismiss the case. The only relief that the IRS has requested in this matter is denial of plan confirmation. As such, this objection is overruled without prejudice to filing a separate motion to dismiss. The IRS's request that the court take judicial notice of certain documents and pleadings in support of its eligibility argument is also denied without prejudice to renewal in the context of a motion to dismiss.

The court neither makes nor implies any ruling at this time on whether either the plan [11 U.S.C. § 1325(a)(3)], or the case [11 U.S.C. § 1325(a)(7)] was filed in good faith.

The court will issue a minute order.

96. [13-33598](#)-B-13 PAMELA JOSEPH
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-11-13 [[15](#)]

Tentative Ruling: The trustee's objection and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objection is sustained. Confirmation of the plan filed October 22, 2013 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before January 21, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

97. [13-34598](#)-B-13 MARVIN/KAREN MURASE
SAC-1

MOTION TO VALUE COLLATERAL OF
HFC
12-3-13 [[14](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of HFC Group's claim secured by the second deed of trust on real property located at 6260 Meadowvista Drive, Carmichael, CA 95608 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the

Property had a value of \$272,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Bank of America Home Loans with a balance of approximately \$313,400.00. Thus, the value of the collateral available to HFC Group on its second deed of trust is \$0.00.

The court will issue a minute order.